

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Arna Frittita,

Plaintiff,

Hon. Hugh B. Scott

v.

04CV541S

**Decision
&
Order**

Cellco Telephone Co., LLC,
dba Verizon Wireless,

Defendant.

Before the court is the defendant's motion to compel discovery (Docket No. 13). On March 22, 2005, the Court set a briefing schedule in this case directing that the plaintiff respond to the motion by April 1, 2005. No response was filed. At oral argument on April 21, 2005, counsel for the plaintiff stated that due to communication difficulties between plaintiff and counsel, plaintiff had not yet made any responses to any of the defendant's discovery demands. Plaintiff acknowledged that the responses were overdue.

In light of the above, the motion to compel is granted. The plaintiff is directed to respond to the defendant's Interrogatories and Request for the Production of Documents within 20 days of the date of this order.

The defendant also seeks the imposition of costs and attorneys fees under Rule 37 of the Federal Rules of Civil Procedure. Rule 37(a)(4)(A) also provides that "[if] the motion [brought under Rule 37] is granted or *if the disclosure or requested discovery is provided after the motion was filed, the court shall*, after affording an opportunity to be heard, require the party or

deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, *unless* the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection *was substantially justified*, or that other circumstances make an award of expenses unjust."

In the case at hand, the plaintiff has failed to demonstrate any justification for the failure to respond to the discovery demands in a timely manner. The Court awards costs and attorneys fees incurred by defendants in connection with bringing the instant motion. The defendant is directed to submit an affidavit with the Court by May 20, 2005, detailing the costs incurred, and itemizing the attorneys fees charged in connection with the instant motion. The plaintiff may respond to the fee application in writing by May 31, 2005. The Court will determine the fee request without further argument unless otherwise determined upon review of the papers.

Conclusion

Defendant's Motion to Compel (Docket No. 13) is GRANTED.

So Ordered.

s/Hon. Hugh B. Scott
United States Magistrate-Judge

Buffalo, New York
April 26, 2005